

1-1 By: Carona S.B. No. 953  
 1-2 (In the Senate - Filed February 28, 2013; March 12, 2013,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 March 26, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 26, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 953 By: Deuell

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the adoption of the Uniform Trade Secrets Act.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Title 6, Civil Practice and Remedies Code, is  
 1-24 amended by adding Chapter 134A to read as follows:

1-25 CHAPTER 134A. TRADE SECRETS  
 1-26 Sec. 134A.001. SHORT TITLE. This chapter may be cited as  
 1-27 the Texas Uniform Trade Secrets Act.

1-28 Sec. 134A.002. DEFINITIONS. In this chapter:  
 1-29 (1) "Claimant" means a party seeking to recover  
 1-30 damages under this chapter, including a plaintiff,  
 1-31 counterclaimant, cross-claimant, or third-party plaintiff. In an  
 1-32 action in which a party seeks recovery of damages under this chapter  
 1-33 on behalf of another person, "claimant" includes both that other  
 1-34 person and the party seeking recovery of damages.

1-35 (2) "Improper means" includes theft, bribery,  
 1-36 misrepresentation, breach or inducement of a breach of a duty to  
 1-37 maintain secrecy, to limit use, or to prohibit discovery of a trade  
 1-38 secret, or espionage through electronic or other means.

1-39 (3) "Misappropriation" means:  
 1-40 (A) acquisition of a trade secret of another by a  
 1-41 person who knows or has reason to know that the trade secret was  
 1-42 acquired by improper means; or

1-43 (B) disclosure or use of a trade secret of  
 1-44 another without express or implied consent by a person who:

1-45 (i) used improper means to acquire  
 1-46 knowledge of the trade secret;

1-47 (ii) at the time of disclosure or use, knew  
 1-48 or had reason to know that the person's knowledge of the trade  
 1-49 secret was:

1-50 (a) derived from or through a person  
 1-51 who had utilized improper means to acquire it;

1-52 (b) acquired under circumstances  
 1-53 giving rise to a duty to maintain its secrecy or limit its use; or

1-54 (c) derived from or through a person  
 1-55 who owed a duty to the person seeking relief to maintain its secrecy  
 1-56 or limit its use; or

1-57 (iii) before a material change of the  
 1-58 person's position, knew or had reason to know that it was a trade  
 1-59 secret and that knowledge of it had been acquired by accident or  
 1-60 mistake.

2-1 (4) "Proper means" means discovery by independent  
 2-2 development, reverse engineering unless prohibited, or any other  
 2-3 means that is not improper.

2-4 (5) "Reverse engineering" means the process of  
 2-5 studying, analyzing, or disassembling a product or device to  
 2-6 discover its design, structure, construction, or source code  
 2-7 provided that the product or device was acquired lawfully or from a  
 2-8 person having the legal right to convey it.

2-9 (6) "Trade secret" means information, including a  
 2-10 formula, pattern, compilation, program, device, method, technique,  
 2-11 process, financial data, or list of actual or potential customers  
 2-12 or suppliers, that:

2-13 (A) derives independent economic value, actual  
 2-14 or potential, from not being generally known to, and not being  
 2-15 readily ascertainable by proper means by, other persons who can  
 2-16 obtain economic value from its disclosure or use; and

2-17 (B) is the subject of efforts that are reasonable  
 2-18 under the circumstances to maintain its secrecy.

2-19 Sec. 134A.003. INJUNCTIVE RELIEF. (a) Actual or  
 2-20 threatened misappropriation may be enjoined. On application to the  
 2-21 court, an injunction shall be terminated when the trade secret has  
 2-22 ceased to exist, but the injunction may be continued for an  
 2-23 additional reasonable period of time in order to eliminate  
 2-24 commercial advantage that otherwise would be derived from the  
 2-25 misappropriation.

2-26 (b) In exceptional circumstances, an injunction may  
 2-27 condition future use upon payment of a reasonable royalty for no  
 2-28 longer than the period of time for which use could have been  
 2-29 prohibited. Exceptional circumstances include a material and  
 2-30 prejudicial change of position before acquiring knowledge or reason  
 2-31 to know of misappropriation that renders a prohibitive injunction  
 2-32 inequitable.

2-33 (c) In appropriate circumstances, affirmative acts to  
 2-34 protect a trade secret may be compelled by court order.

2-35 Sec. 134A.004. DAMAGES. (a) In addition to or in lieu of  
 2-36 injunctive relief, a claimant is entitled to recover damages for  
 2-37 misappropriation. Damages can include both the actual loss caused  
 2-38 by misappropriation and the unjust enrichment caused by  
 2-39 misappropriation that is not taken into account in computing actual  
 2-40 loss. In lieu of damages measured by any other methods, the damages  
 2-41 caused by misappropriation may be measured by imposition of  
 2-42 liability for a reasonable royalty for a misappropriator's  
 2-43 unauthorized disclosure or use of a trade secret.

2-44 (b) If wilful and malicious misappropriation is proven by  
 2-45 clear and convincing evidence, the fact finder may award exemplary  
 2-46 damages in an amount not exceeding twice any award made under  
 2-47 Subsection (a).

2-48 Sec. 134A.005. ATTORNEY'S FEES. The court may award  
 2-49 reasonable attorney's fees to the prevailing party if:

2-50 (1) a claim of misappropriation is made in bad faith;

2-51 (2) a motion to terminate an injunction is made or  
 2-52 resisted in bad faith; or

2-53 (3) wilful and malicious misappropriation exists.

2-54 Sec. 134A.006. PRESERVATION OF SECRECY. In an action under  
 2-55 this chapter, a court shall preserve the secrecy of an alleged trade  
 2-56 secret by reasonable means. There is a presumption in favor of  
 2-57 granting protective orders to preserve the secrecy of trade  
 2-58 secrets. Protective orders may include provisions limiting access  
 2-59 to confidential information to only the attorneys and their  
 2-60 experts, holding in camera hearings, sealing the records of the  
 2-61 action, and ordering any person involved in the litigation not to  
 2-62 disclose an alleged trade secret without prior court approval.

2-63 Sec. 134A.007. EFFECT ON OTHER LAW. (a) Except as  
 2-64 provided by Subsection (b), this chapter displaces conflicting  
 2-65 tort, restitutionary, and other law of this state providing civil  
 2-66 remedies for misappropriation of a trade secret.

2-67 (b) This chapter does not affect:

2-68 (1) contractual remedies, whether or not based upon  
 2-69 misappropriation of a trade secret;

3-1 (2) other civil remedies that are not based upon  
3-2 misappropriation of a trade secret; or

3-3 (3) criminal remedies, whether or not based upon  
3-4 misappropriation of a trade secret.

3-5 (c) To the extent that this chapter conflicts with the Texas  
3-6 Rules of Civil Procedure, this chapter controls. Notwithstanding  
3-7 Section 22.004, Government Code, the supreme court may not amend or  
3-8 adopt rules in conflict with this chapter.

3-9 (d) This chapter does not affect the disclosure of public  
3-10 information by a governmental body under Chapter 552, Government  
3-11 Code.

3-12 Sec. 134A.008. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
3-13 This chapter shall be applied and construed to effectuate its  
3-14 general purpose to make uniform the law with respect to the subject  
3-15 of this chapter among states enacting it.

3-16 SECTION 2. Subdivision (2), Section 134.002, Civil Practice  
3-17 and Remedies Code, is amended to read as follows:

3-18 (2) "Theft" means unlawfully appropriating property  
3-19 or unlawfully obtaining services as described by Section 31.03,  
3-20 31.04, [~~31.05,~~] 31.06, 31.07, 31.11, 31.12, 31.13, or 31.14, Penal  
3-21 Code.

3-22 SECTION 3. The change in law made by this Act applies to the  
3-23 misappropriation of a trade secret made on or after the effective  
3-24 date of this Act. A misappropriation of a trade secret made before  
3-25 and a continuing misappropriation beginning before the effective  
3-26 date of this Act are governed by the law in effect immediately  
3-27 before the effective date of this Act, and that law is continued in  
3-28 effect for that purpose.

3-29 SECTION 4. This Act takes effect September 1, 2013.

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